

BellSouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

August 20, 2001

Guy M. Hicks  
General Counsel

615 214 6301  
Fax 615 214 7406

EXECUTIVE

VIA HAND DELIVERY

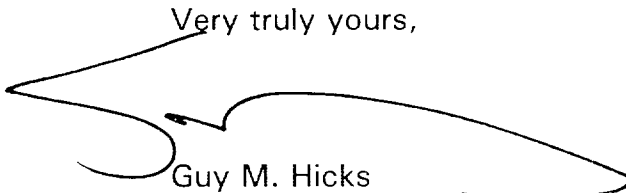
David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Docket to Establish Generic Performance Measurements, Benchmarks  
and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*  
Docket No. 01-00193

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to Broadslate's Petition to Intervene and Motion to Submit Direct Testimony. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch  
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Docket to Establish Generic Performance Measurements, Benchmarks  
and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*

Docket No. 01-00193

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO**  
**BROADSLATE'S MISLEADING AND UNTIMELY PETITION**  
**TO INTERVENE AND UNTIMELY MOTION TO**  
**SUBMIT DIRECT TESTIMONY**

Late on Thursday, August 16, 2001, three days before the hearing, Broadslate Networks, Inc. ("Broadslate") filed a Petition to Intervene in this matter. Not only was the Petition untimely, it was misleading.

Tennessee Regulatory Authority ("Authority") Rule 1220-1-2-0.08 requires that parties file petitions to intervene at least seven days prior to the date of the hearing. Broadslate's Petition was filed on Thursday afternoon, only one business day prior to the Monday hearing. The Petition provides no explanation for the tardy filing. Counsel for Broadslate represents other parties to this proceeding and is well aware of the procedural schedule ordered by the Authority. The Petition should be denied as untimely.

Moreover, there was nothing in the Petition that stated or even suggested that Broadslate intended to file late testimony. Broadslate's brief, one-page Petition did state that "[g]ranted this petition will not impair the orderly and prompt

conduct of these proceedings.” (See Attachment 1.) After reviewing the language Broadslate chose to divulge in its Thursday afternoon Petition and in order to seek to avoid pre-hearing disputes, BellSouth did not respond to the Petition on Friday, August 17. BellSouth would have filed a response on August 17 in opposition to the Petition had it known Broadslate intended to seek to file late testimony.

On Friday afternoon at approximately 5:45 p.m. BellSouth received a faxed copy of Broadslate’s Motion to Submit Direct Testimony (“Motion”). Immediately upon receipt of the Motion, BellSouth attempted to reach Broadslate’s counsel in order to express its opposition to the Motion. BellSouth was informed that Broadslate’s counsel was not in the office. Having not received the Motion until after close of business on Friday afternoon, BellSouth could not file a response until Monday morning, August 20.

Broadslate’s Motion should be summarily denied. First, for the reasons stated above, the Authority should deny Broadslate’s Petition to Intervene because it is untimely and misleading. Such a ruling would be fully consistent with both Authority rules and would render the Motion to file late “testimony” moot.

Second, even if the Authority allows Broadslate to intervene on a limited basis, the Authority should deny the Motion because it blatantly disregards the Authority’s procedural order, which required that all pre-filed direct testimony be filed by July 9, 2001. Broadslate cites no basis for ignoring the procedural order.

Third, there is no testimony attached to Broadslate’s untimely Motion to Submit Direct Testimony. Rather than prepare testimony, Broadslate chose to

simply attach four unsigned typewritten complaints. This purported testimony offers no constructive comment on either BellSouth's proposed SQMs or SEEM or the CLEC proposals. Indeed, the "testimony" does not make any proposals at all. The Hearing Officer's First Report and Recommendation, which was approved by the Authority on May 15, 2001, stated "[p]ursuant to an established schedule, the parties will submit proposed changes to these standards [the DeltaCom starting point] with supporting evidence." (See p. 2 of Order Approving First Report and Recommendation of Hearing Officer, entered July 27, 2001.) Broadslate's testimony, therefore, is not only untimely, it is not responsive to the Hearing Officer's request.

Broadslate could have filed testimony in accordance with the procedural schedule. Indeed, the "complaints" attached to the Motion go back as far as May. Broadslate, therefore, was aware of these complaints in time to file timely testimony but chose not to do so, apparently in an effort to gain an unfair tactical advantage. The only argument Broadslate makes in support of its untimely Motion is its assertion that there will be no prejudice to BellSouth because BellSouth will have "a full opportunity to cross-examine Mr. Spillman about these incidents." Broadslate also states that it will not object if BellSouth wishes to introduce supplemental rebuttal testimony, either written or live, concerning the four "incidents" (See Attachment 2, p. 1.)

Contrary to Broadslate's cavalier conclusion that BellSouth will not be prejudiced by its untimely filings, this is simply not the case. First, BellSouth has

had no opportunity to file testimony to rebut Broadslate's purported "direct testimony". Second, BellSouth has had no meaningful opportunity to investigate these claims and prepare its witnesses prior to the hearing. Third, BellSouth has had no meaningful opportunity to prepare its cross-examination relating to these claims. Finally, of course, BellSouth has no obligation to submit late-filed testimony after the hearing in order to accommodate Broadslate's disregard of the procedural schedule. Indeed, other parties to the proceeding may object to a late filing by BellSouth.

For the foregoing reasons, the Authority should deny Broadslate's untimely and misleading Petition to Intervene. In the event that the Authority chooses to allow Broadslate to intervene on a limited basis (that is, without filing testimony or complaints), the Authority should deny Broadslate's untimely Motion.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

  
By: \_\_\_\_\_

Guy M. Hicks  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300  
615/214-6301

R. Douglas Lackey  
J. Phillip Carver  
675 W. Peachtree St., NE, Suite 4300  
Atlanta, GA 30367

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

August 16, 2001

IN RE: *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*  
Docket No. 01-00193

PETITION TO INTERVENE

Broadslate Networks, Inc. ("Broadslate") petitions the Authority to intervene in the above-captioned proceeding pursuant to T.C.A. § 4-5-310(b).

The above-captioned docket concerns the development of a common set of performance measurements, benchmarks and enforcement mechanisms to ensure that BellSouth Telecommunications, Inc. ("BellSouth") provides non-discriminatory access to its network elements as required by the Telecommunications Act of 1996. Broadslate is concerned that the adoption of the proposed performance measures may not be adequate to ensure non-discriminatory access to BellSouth's network.

Broadslate purchases network elements from BellSouth and therefore has an interest in the outcome of this proceeding. Granting this petition will not impair the orderly and prompt conduct of these proceedings.

An order granting the petition is attached.

Respectfully submitted,

By: 

Henry Walker  
Boult, Cummings, Conners & Berry, PLC  
414 Union Street, Suite 1600  
P. O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

In Re: Docket to Establish Generic                     )  
Performance Measurements, Benchmarks        ) Docket No. 01-00193  
and Enforcement Mechanisms for                )  
BellSouth Telecommunications, Inc.            )

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MOTION TO SUBMIT DIRECT TESTIMONY

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Broadslate Networks, Inc. ("Broadslate"), a competing local exchange carrier operating in Tennessee, only recently decided to participate in this proceeding and filed a petition to intervene on August 16, 2001. As stated in the petition to intervene, Broadslate is concerned that the proposed performance measures under consideration by the Authority may not be sufficient to insure that BellSouth Telecommunications, Inc. ("BellSouth") complies with the open access and non-discrimination provisions of the federal Telecommunications Act. To illustrate that point, Broadslate asks to present testimony from Mr. John Spilman, director of regulatory affairs and industry relations, concerning four incidents, all occurring within the last three months, involving BellSouth's anti-competitive conduct in Tennessee. Those incidents, and the substance of Mr. Spilman's testimony, are set for in the attached documents.

Broadslate submits that the late filing of this testimony will not prejudice BellSouth which will have a full opportunity to cross-examine Mr. Spilman about these incidents. Furthermore, Broadslate will not object if BellSouth wishes to introduce supplemental rebuttal testimony, either written or live, concerning the four incidents.

For these reasons, Broadslate asks that this Motion be granted.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker *by wlm*  
Henry Walker  
414 Union Street, Suite 1600 *u/permission*  
P.O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363  
*Counsel for Broadslate Networks, Inc.*



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via facsimile or hand delivery, to the following on this the 17th day of August, 2001.

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce St.  
Suite 2101  
Nashville, TN 37201-3300

Jim Lamoureux, Esq.  
AT&T Communications of the South Central States  
Room 8068  
1200 Peachtree St., NE  
Atlanta, GA 30309

Tim Phillips, Esq.  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, TN 37202

Jon E. Hastings, Esq.  
Boult, Cummings, Connors and Berry PLC  
P.O. Box 198062  
414 Union Street Suite 1600  
Nashville, TN 37219

Charles B. Welch, Esq.  
Farris, Mathews, et al.  
618 Church Street, #303  
Nashville, TN 37219

Dana Shaffer, Esq.  
Xo Tennessee, Inc.  
105 Molloy St.  
Nashville, TN 37201

Henry Walker by Wm  
Henry Walker w/permission

## Incident 1

Date: May 17, 2001.1730

BellSouth Problem: Card Reader @CHTGTNDT.

Broadslate Problem: Broadslate CO tech could not access the CHTGTNDT central office because he was issued an invalid code on his access pass. At 1800 Broadslate calls the ACAC center (205) 714-5100 and spoke with Linda who in turn called the CO Manager who would not grant the Broadslate Tech access to the site even though the Broadslate tech had proper picture ID. We had customers out of service because of an equipment failure in our collocation cage.

According to BellSouth that night, the card reader system was not working and the code on the card belonging to Scott Simpson could not be verified or modified to allow access. 32 customers were affected. An important point to make here is that our CO technician, holding proper identification, was on the steps of the CO with an access card that was not working due to failure of the card key system (per BS), and the BS CO manager would not even consider escorted access to our cage to reboot the Stinger DSLAM.

## Incident 2

My name is Janice Meissner and I'm an employee at Broadslate Networks, Inc. On or about June 26, 2001 I signed up for Broadslate broadband service at my home in Chattanooga. On or about August 1, 2001, a BellSouth technician came to my house to install the unbundled loop that Broadslate had ordered from BellSouth in order to provision by broadband service. When BellSouth was at my home to deliver the circuit they discovered that the loop distance exceeded 18,000 ft and by Broadslate's standards, is too far to provision service on the type of 2-wire unbundled loop that was ordered. In this situation, I as a customer, have the option to select an alternative transport facility in order to receive Broadslate's service even though my location exceeds 18,000 ft. Broadslate refers to this as an Extended Loop and it utilizes the unbundled DS1 as the transport facility. While I was discouraged about the distance being beyond 18,000 ft, I knew that I had another option to still receive service from Broadslate. Because I was home at the time the Bellsouth technician came out, I talked to him a little bit. He asked if I was a Broadslate employee (apparently that had come up when he was testing with us.) He told me I would be able to get ADSL from BellSouth if I wanted it because they had a remote DSLAM about 1/2 mile from my house.

Incident 3

July 26, 2001

Darryl Washington  
Account Manager  
BellSouth  
9<sup>th</sup> Floor  
600 North 19<sup>th</sup> Street  
Birmingham, AL 35203

Dear Darryl:

Please be advised that Broadslate Networks, Inc. considers BellSouth's inability to successfully deliver UCL-ND loops on the FOC date a failure to meet the obligations of our Interconnection Agreement and the subsequent UCL-ND Amendment.

Due to a lack of accurate documentation and conflicting instructions between the LCSC and the account management team, Broadslate had a difficult time ordering the UCL-ND. Now that we have partially overcome the ordering hurdle these orders are getting held up in the BellSouth provisioning process and critical FOC dates are being missed. By BellSouth's own admission, you have not properly implemented the processes to correctly flow UCL-ND orders, or trained personnel sufficiently to process and complete the UCL-ND orders, on the due dates provided by BellSouth.

- Between 7/18/01 and 7/25/01 BellSouth missed the FOC date on 26 of 34 UCL-ND orders and these 26 have still not been completed.
- There are another 64 orders that have FOC dates between 7/26/01 and 8/1/01 that are in jeopardy given current performance.

The overwhelming majority of these orders (75) are for BlueStar customers that will have their service terminated by BlueStar service on August 1, 2001. It is this condition that makes this such a critical problem.

Broadslate was pleased with the discussion and commitment that was expressed on our conference call this morning. To summarize the commitment made by BellSouth on the call:

- BellSouth has identified the problem areas associated with these orders and taken corrective action.
- All 26 that were not completed on the due date will be completed today (7/26/01)
- All 64 orders that have due dates between 7/26/01 and 8/1/01 will be completed on the due date.
- BellSouth will advise technicians, in advance of receiving the supplemented orders, that cooperative testing should be performed on these orders and Broadslate will supplement

these orders to request cooperative testing after we agree on the correct format with the account team (Cynthia Hodges).

Broadslate expects BellSouth to meet the commitments made this morning to correct the problems with UCL-ND product. This will give us an opportunity to deliver service to BlueStar customers prior to their disconnection of service on Aug. 1, 2001. Anything short of meeting your commitments is unacceptable.

Sincerely,

John Spilman  
Director, Regulatory Affairs & Industry Relations

#### Incident 4

Customer: Hospital Alliance of Tennessee

Date of Sale: July 6, 2001

Order Placed for UCL-ND: 7/12/01

Order Accepted by BellSouth: 7/31/01

Original FOC Date: 7/20/01

Sometime between the 7/13 date and 7/24 Broadslate was advised that there had been some problems and that we would be receiving a revised FOC date.

Advised of new FOC date: 7/24/01

New FOC date: 7/31/01

On 7/24 Broadslate's Customer Advocate advised the customer of the new FOC date of 7/31. Upon hearing this the customer became very nervous about not being up by 8/1 because BlueStar was discontinuing service on that date. Customer called BellSouth on 7/24 to see if they could provide broadband service by 8/1 and they said yes, no problem, and installed service on 7/27. Customer said she was nervous about going with another small company (stated this after FOC date got pushed to 7/31) and decided to go with BellSouth because she knew they weren't going anywhere.

BellSouth installs retail DSL service: 7/27

Customer opts to exercise Broadslate 30 day cancel provision with no obligation: 7/27

## CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2001, a copy of the foregoing document was served on the following parties, via the method indicated:

☒ Hand  
☐ Mail  
☒ Facsimile  
☐ Overnight

James Lamoureux, Esquire  
AT&T  
1200 Peachtree St., NE  
Atlanta, GA 30309

☒ Hand  
☐ Mail  
☒ Facsimile  
☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

☒ Hand  
☐ Mail  
☒ Facsimile  
☐ Overnight

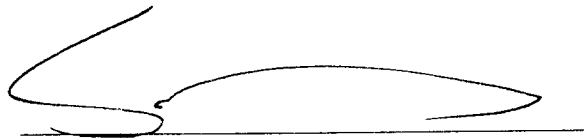
Jon E. Hastings, Esquire  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

☒ Hand  
☐ Mail  
☒ Facsimile  
☐ Overnight

Charles B. Welch, Esquire  
Farris, Mathews, et al.  
618 Church St., #300  
Nashville, TN 37219

☒ Hand  
☐ Mail  
☒ Facsimile  
☐ Overnight

Dana Shaffer, Esquire  
XO Communications, Inc.  
105 Malloy Street  
Nashville, TN 37201

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.